

Transitional Justice in Tunisia: Any Role for Islam?

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ELHAM KAZEMI, OCT 19 2018

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Transitional justice (TJ) is broadly defined as “a response to systematic or widespread violations of human rights” (International Center for Transitional Justice (ICTJ) 2008, 1). TJ’s aspirational goals – accountability, democratization, and reconciliation – are based on four pillars of the right to justice, truth, reparation, and guarantees of nonrecurrence. Teitel (2003) identifies three phases of TJ: The first phase begins and ends with the Nuremberg Military Tribunals, the second generation of TJ is characterized by a move toward national-level prosecutions as well as a shift from retributive justice to questions of restorative justice, the third and final phase characterizes the move of TJ discourse from exception to the mainstream. Today, scholars seem to agree that mainly as a result of normative shifts, the TJ discourse has become globalized (Teitel 2003; Sikkink 2011). However, they also recognize that TJ now operates in very different contexts from those for which it was first designed (Macdonald 2017, 287). Building upon Teitel’s genealogy, Sharp (2014, 157) argues that we are in the “fourth generation” of TJ which concerns “the underlying politics of transitional justice work, the need to balance local and international agency, and the need for greater economic justice.” In fact, critical TJ scholars have advocated for a paradigm shift in response to the “crisis of the liberal peace” towards a more local-centered TJ approach (Cooper 2007; Shaw, Waldorf, and Hazan 2010).

To rectify the detachment of TJ from the socio-political reality of the countries concerned, not only does the TJ literature emphasize the active participation and engagement of locals at every stage of the process, but also the “discourse of the local” underscores the incorporation of local mechanisms and perceptions of justice (Ubink and Rea 2017, 279). Recently, there have been calls for integrating Islamic principles into post-conflict and post-transition frameworks in Muslim-majority countries. These calls emphasize the centrality of Islam to community and personal life and point out that integration of Islamic notions of justice into TJ mechanisms can contribute to a more viable and sustainable TJ process in these countries (Johnston 1996; Zoli, Bassiouni, and Khan 2017; Yusuf 2017; United States Institute of Peace (USIP) 2011). Yet, even here, criticisms and obstacles remain. Besides the dangers of essentializing local traditions, the relationship between religion and politics in post-colonial societies going through transition and democratization remains highly complex and contested.

This paper examines the role of Islam in the TJ process in Tunisia. TJ has been a central plank of post-revolutionary, post-dictatorship Tunisia following the “dignity revolution” in 2011. Tunisia is the first post-Arab Spring country to prioritize TJ by adopting a comprehensive law to carry it out. The Organic Law on Establishing and Organizing Transitional Justice was passed on 13 December 2013, creating a truth commission (*Instance Vérité et Dignité*, IVD) and setting forth a comprehensive framework to address violations committed during the period from 1 July 1955 (right before Tunisian independence) up to the issuance of the law. This study draws on official documents, surveys conducted by the Arab Barometer and Pew Research Center as well as reports prepared as part of “A Transitional Justice Barometer” project.[1] Numerous secondary sources are also used as a check on the former set of data. The empirical analysis shows the uneasy relationship between Islam and politics in post-transition Tunisia as reflected in the TJ process in the country. Despite constant calls by scholars and practitioners for “localizing” the TJ process in Tunisia, it was designed and implemented as a top-down and state-led process. In the context of complex discussions over Islamism and secularism in post-revolutionary Tunisia, TJ became one of the contested sites resulting in debates over the scope of TJ as well as the definition of “victimhood” and realization of economic and

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social rights. Although Stepan commends Tunisia as an epitome of the principle of “twin tolerations,” (Stepan 2012, 16; Stepan 2016a) the continued polarization between the two dominant groups of political actors – Islamists and secularists – led to this principle being constantly contested and renegotiated. The alliance between the two fronts and the acceptance of Islamists – the Ennahda party is the most prominent Islamic party in Tunisia – as legitimate political actors came only as a result of Ennahda’s organizational and ideological changes with clear implications for transitional justice and politics more broadly in the country.

A Move Toward “Localism” in Transitional Justice

The liberal framework of TJ has come under fire for being internationally-driven and not suited to local realities and norms. Cultural objections point out the disconnect between TJ processes and local practices as one of the obstacles on the way of promoting human rights and rule of law in post-transition contexts. Further, TJ processes are often perceived as distant and inaccessible to the local population. Privileging the formal legalistic discourse, which is often alien to survivors and victims, alienates the local population and produces a sense of lack of agency (Lundy and McGovern 2008; Gready and Robins 2014, 343; Sriram 2016, 28–31). The result has been an emphasis on an institutionally demanding TJ process that is not consistent with the quality and capacity of state institutions and is also culturally incongruent with realities of many post-transition societies (Sharp 2014, 81).

The key question here is how TJ mechanisms can assure political engagement and agency to a population that has long lived under authoritarianism. Some scholars have argued that a community-based approach with an emphasis on the active participation of locals at every stage of the TJ process is the best solution. According to this account, such an approach increases the legitimacy and efficacy of TJ efforts (Mac Ginty 2008; Lundy and McGovern 2008; Sharp 2013). The most comprehensive community-based initiatives are the ones that draw on local norms and mechanisms in their work (Lundy and McGovern 2008, 266–72). It is in this context that some scholars have pointed out the central role that religion can play in reconciliation at times of transition. The now-famous South African Truth and Reconciliation Commission (TRC), which still stands as a TJ model or lesson, drew on various religious elements in its work. Religious actors also played an important role in various other TJ initiatives in Latin America and other African countries. The implementation of the *diyāt* – blood money – program in Aceh, Indonesia is one of the earliest attempts to draw on Islamic principles in the context of transitional justice. In 2010, the United States Institute of Peace (USIP) organized a workshop on post-conflict justice and concluded that “broadly speaking, the principles of Islamic law align with international legal norms of truth, accountability and compensation for victims of mass crimes and human rights abuse” (USIP 2011). The Arab Spring presented a ripe opportunity for a discussion on the responsibility of states and communities to ensure that principles of Islamic justice are achieved.

Although religion brings various benefits to the TJ table, it is important for TJ scholarship and practice to take into account two points when engaging with religion: First, as the above discussion makes clear, portraying local traditions and religion as inherently good or beneficial risks essentialism and ahistoricity that need to be challenged. (Schwarz and Lynch 2016, 9) Second, scholars and practitioners should pay attention to political, cultural, and historical factors and sensibilities when discussing the contributions of religion to the TJ debate.

Religion and Secularism in Tunisia

Before revolution, Tunisia was considered the most secular nation in the Arab region. After its independence from France in 1956, Bourguiba, the first president of independent Tunisia, and his *Destour* (Constitution) party attempted to remove religion from the public sphere in the name of modernization and *laïcité* and repressed Islamic movements in the country (Urech 2014, 2; Andrieu 2016, 265). After Ben Ali rose to power through a bloodless *coup d’état* in 1987, Islamists enjoyed a short period of liberalization. The Islamic Tendency Movement (*Mouvement de la Tendence Islamique*, MTI), which was established by Rachid Ghannouchi in 1981, changed its name to Ennahda (Renaissance) and could win victories in the 1989 elections (Grewal 2018, 8). Threatened by its success, Ben Ali cracked down on the party with many of its members either being exiled or imprisoned in the country. Religion was securitized and parties with religious affiliations were forbidden. The securitization of Islam was further reinforced following the initial victories of the Algerian Islamist party in 1990 and the civil war that engulfed Algeria from 1992 to 2002 (Stepan 2016b, 100–101; Andrieu 2016, 266–67).

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After Ben Ali's ouster, the Ennahda party reemerged after decades of suppression and exile and gained over 40 percent of the votes in the National Constituent Assembly (NCA) elections held on 23 October 2011 (Urech 2014, 4). According to Stepan, an important facet of democratization in religious contexts is the concept of "twin tolerations." On the one hand, democratic states must tolerate religious actors and the inclusion of religious argumentation in politics. On the other hand, religious groups must avoid actions that "impinge negatively on the liberties of other citizens or violate democracy and the law" (Stepan 2000, 39–40; Stepan et al. 2011, 116). For Stepan, post-revolutionary Tunisia is one of the countries that meets this principle, but his notion of twin tolerations proved to be rather limited in Tunisia. In an unexpected turn of events, in May 2016, Ennahda announced that it had separated its political movement from its social movement and wished to be labeled as a Muslim Democratic Party (Ghannouchi 2016). This acceptance of secular democracy can be argued to form one part of the twin tolerations. But this move can also be explained as an attempt to deemphasize the salience of religion to avoid repression and take advantage of political openings (Grewal 2018, 1–4).

Transitional Justice in Post-Revolutionary Tunisia

Before the adoption of the Organic Law on TJ

Ironically, Ben Ali himself initiated the discussion on transitional justice in January 2011. Three separate commissions were established right after Ben Ali's flight from Tunisia: an anti-corruption commission, a commission to investigate human rights violations committed from the start of the revolution (December 17, 2010) until its end (January, 14 2011), and a commission on political reform (Lamont 2016, 33). Moreover, military tribunals initiated criminal prosecutions against Ben Ali, two former interior ministers, and high-ranking security and army officials for acts of violence against protesters (Lamont and Boujneh 2013, 39–40). These trials, however, caused bitterness among victims as they were perceived as only prosecuting "*les symboles de l'ancien régime*" rather than all the perpetrators and led to protests after the Permanent Military Court of Appeal reduced the sentences of some of the convicted offenders even in cases of serious crimes (Andrieu 2016, 74–75).

Financial compensation was also paid to the families of those killed and to those injured during the revolution besides providing free health care for the wounded. However, a sample survey conducted by a local NGO in 2014 shows that the majority of beneficiaries were unsatisfied with the reparations they received. This was mainly due to the limited conceptualization of reparations as only monetary compensation and the absence of other measures to acknowledge their suffering and dignity (El Gantri 2015, 10; Voorhoeve 2012, 8). Further, the commission on political reform proposed the draft article 15 of the Tunisian electoral law which excluded three categories of people from participating in the NCA elections: individuals holding ministerial positions in Ben Ali's government, individuals with senior positions of responsibility within Ben Ali's party – the Democratic Constitutional Rally (*Rassemblement Constitutionnel Démocratique*, RCD) and those who called for Ben Ali to run for presidency again in August 2010 (Lamont and Boujneh 2013, 41; Urech 2014, 5–6).

Following these ad hoc measures and with the support and cooperation of multiple international actors and domestic civil society, the Ministry of Human Rights and Transitional Justice launched a national consultation on 14 April 2012 followed by a national dialogue which constituted of conducting surveys and questionnaires by six regional consultative commissions. Since Islamists constituted the largest group of victims, they dominated the process in the national dialogue. According to the results, the majority (37 percent) expected acknowledgment of their suffering, while 29 and 28 percent respectively prioritized monetary compensation and admission on the part of the perpetrators (Lamont and Boujneh 2013, 45). Scholars and practitioners, however, have criticized the national dialogue for serving "to filter local voices into internationally established and pre-fixed normative frameworks" (Lamont and Pannwitz 2016, 280). The results of TJ Barometer also show that despite the centrality of reparations in the process, victims generally prioritized accountability. Their conception of accountability, however, did not necessarily involve criminal punishment, but rather a form of recognition (Andrieu et al. 2015, 28).

After the Adoption of the Organic Law on TJ

Based on the results of the national dialogue, the Organic Law on TJ was drafted and adopted on December 13,

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2013. It set forth a comprehensive framework to address violations committed during the dictatorship period and established the Truth and Dignity Commission with a very broad mandate. The temporal mandate of the commission was one of the issues over which there was a great disagreement. Neo-Destourian parties such as Nidaa Tounis wanted a narrow mandate for IVD including only the abuses during the Ben Ali era. Ennahda and leftist parties, however, strongly advocated for a broad temporal mandate going back to pre-Bourguia's presidency in an attempt "to challenge the modernist founding myth of the Tunisian state" (Lamont and Boujnef 2013, 41; Andrieu 2016, 280; Lamont 2016, 95). Both sides of the debate considered TJ as a means of memory construction which went beyond a battle between remembering and forgetting, but rather as a political process involving contestations over the very identity of the state including its relationship with religion and religious actors.

Moreover, there was a lack of clarity on the definition of victim and even the use of the term "victim" itself has been criticized. There was a perception among Tunisians that "victim" is a passive term and denotes lack of agency; as put by one of the former political prisoners: "We are not victims, victims who have suffered oppression and no longer have a role in society. No, instead, we have a large role in the transitional process" (Andrieu *et al.* 2015, 27). Agreeing on an objective list of victims proved to be a challenge. As the interviews conducted by TJ Barometer show, on the one hand, there was a general refusal to recognize the nature of the past victimhood of Islamists and on the other hand, a discourse emerged over "fake" victims mainly referring to Islamists too often assumed *en masse* to be "terrorists" (*Ibid.*, 4).

Further, in the TJ process, a discourse emerged over "direct" and "indirect" victims with women generally being assigned to the latter category. Thus, women were considered to be mainly "indirectly" affected by the violations as wives, mothers, or daughters of "direct" victims (*Ibid.*, 23–24). Apart from these factors, underrepresentation of women is also due to the stigma attached to violations against women with some people claiming that Ennahda discouraged its female members to come forward and give testimony (*Ibid.*, 47). Whatever the reason for the reluctance of female victims to participate, there is a need to establish alternative spaces that are trusted and locally rooted for women in order to provide psychological support and a forum for them to express their views and demands.

The national dialogue demonstrated that victims throughout Tunisia believed that the TJ process should also address economic and social justice. The Arab Barometer surveys indicate the same view among Tunisians. The majority still consider the economic situation and corruption as the biggest problems facing the country (Robbins 2016; Berman 2016). In fact, Tunisia is one of the few countries that established a comprehensive strategy along with official institutions to deal with economic and social issues. Interviews conducted on the ground show that a majority of the people who voted for Ennahda did it because they believed it would abolish corruption and address social and economic concerns, not because of its Islamic orientations (Voorhoeve 2012, 6). The failure of Ennahda to deliver on these fronts and its eventual acquiescence to the controversial Economic Reconciliation Law[2] led to the declining popularity of Ennahda. The steady support for Islam to play a role in politics indicate that the views regarding Islam and politics are not necessarily tied to Ennahda (Pew Research Center 2012; 2014).

The relationship between Islam and state has always been controversial and contested in Tunisia following its independence from France. It reached its climax in summer 2013[3] with Ennahda insisting on a more central role for Islam in the Constitution in the face of opposition from its Troika partners and other political actors. The Constitution was eventually adopted as a product of a pragmatic consensus between Islamist and secular political parties in the Constituent Assembly. While the civil nature of the state was confirmed in the Constitution, numerous references to Islam were included. The post-transition political scene has been colored with debates over what constitutes the identity of *la tunisianité* and polarized identity politics has made it hard for TJ actors to capitalize on local and religious traditions. Ennahda, as the most prominent Islamic party in Tunisia, has at times moved toward separation of religion from politics in order to ensure its political survival and grip on power.

The Organic law on TJ does not mention how Islam, religious leaders or mosques can play a role in the process. Although there is one "specialist in religious sciences" among the 15 members of the Commission, it is not clear what role he/she should play in bringing religion into the TJ process. Before the adoption of the Organic Law, Mohsen Sahbani of the Ministry of Human Rights and Transitional Justice referred to the role of Desmond Tutu in South

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Africa's truth commission as well as the vital role the Catholic Church leaders played in TJ efforts in Latin America. One of the members of IVD also pointed out that: "Victims or perpetrators, almost all concerned are Muslims. The concept of forgiveness is very important in Islam, most of the ninety-nine names of God pertain to His grace, mercy and forgiveness" (Gray and Connan 2016, 112). But in December 2013, Azzouz Chaouali, who was appointed as the religious specialist on the Commission, resigned along with three other members without giving any reasons. They have not been replaced as of now (Tunisia News Gazette 2017).

Conclusion

The legacy of strict state control of religion combined with the violent crackdown on Islamic movements and their dehumanization impacted the politics of state building after the revolution. Despite all the talks on localization, TJ in Tunisia is to a great extent a top-down and elite-driven process and as a result, impacted by the political polarization between the two camps of Islamists and Destourians/secularists. The collective memory of the past became the subject of debate by contesting the temporality of abuses and the definition of "victims." But more importantly, over time, Ennahda moved toward a more secularist approach to political affairs. Pragmatic considerations as well as regional dynamics, especially the fate of Muslim Brotherhood in Egypt, were key factors in this regard. The polarization as well as the later compromise between Ennahda and Nidaa Tounis resulted in a global and secular approach being favored in official mechanisms of TJ. This led to the exclusion of Islam from the official process which in turn resulted in a gap between professional orientation and popular perceptions of TJ since many victims saw Islam as framing their understanding of justice as visible in the work of victim groups such as *Karama*. Overall, experiences of Tunisians about the TJ process show that it is remote, poorly understood, and unresponsive to their needs. Some people felt that the process was ideologized and perceived by the Tunisians as being appropriated and exploited to promote an ideology or political group. As a result, there has been a disenchantment with the process with many victims claiming to rely on religion to cope with this resignation: "We first believe in divine justice before earthly justice" (*Ibid.*, 52).

Notes

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[1] "A Transitional Justice Barometer: Measuring the Needs for and Impact of Transitional Justice Processes in Tunisia" was a 2-year research project funded by The Netherlands Organization for Scientific Research (NWO) and conducted by Center for Applied Human Rights (CAHR), Al-Kawakibi Democracy Transition Center (Tunisia) and Impunity Watch (The Netherlands). For more information, see <https://www.nwo.nl/en/research-and-results/research-projects/i/07/12607.html>.

[2] This law was championed by Nidaa Tounis and was eventually passed in September 2017. It effectively gave a blanket amnesty to former public servants involved with abuse of public funds and eliminated the IVD's mandate relating to corruption. The government argued that the measure was needed for economic recovery. (Human Rights Watch 2017; ICTJ 2017)

[3] It should be noted that at the same time a counter-revolution was going on in Egypt ousting the Muslim brotherhood from power.

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